



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

October 18, 2002

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CONEX 143333-02
CC:ITA

[REDACTED]

Attention: [REDACTED]

Dear [REDACTED]:

I am responding to your letter dated August 6, 2002, on behalf of your constituent, Mr. [REDACTED]. Mr. [REDACTED] is a class member who has a residual share in the settlement fund of the Continental Can litigation. Mr. [REDACTED] said that litigation involving the taxability of this fund was decided in favor of the class members and questions his liability for \$[REDACTED] in income taxes.

Mr. [REDACTED]'s belief that the litigation was decided in favor of the class members is not entirely correct. Although two circuits, *Dotson v. United States*, 87 F.3d 682 (5th Cir. 1996), and *Gerbec v. United States*, 164 F.3d 1015 (6th Cir. 1999), decided the issues in favor of the class members generally, two other circuits, *Hemelt v. United States*, 122 F.3d 204 (4th Cir. 1997), and *Mayberry v. United States*, 151 F.3d 855 (8th Cir. 1998), decided the issues totally in favor of the government. The results of the litigation, however, have no bearing on Mr. [REDACTED]'s tax liability as assessed by the IRS.

As we explained in our letter to you dated January 25, 2001, Mr. [REDACTED] failed to include underpayments of tax with his returns filed for [REDACTED], [REDACTED], and [REDACTED]. Accordingly, the IRS assessed the unpaid tax and imposed appropriate penalties. These amounts remain unpaid and interest continues to accrue as required by law. Further, we indicated that the IRS determined the unpaid amount to be uncollectible; nevertheless, interest continues to accrue on the balance. Our normal practice is to send the taxpayer an annual notice of his federal tax liability even if the IRS determines that the liability is uncollectible.

I hope this information is helpful. If you have further questions, please call [REDACTED]
[REDACTED]

Sincerely,

Robert A. Berkovsky
Branch Chief
Office of Associate Chief Counsel
(Income Tax and Accounting)